

1 ORRICK, HERRINGTON & SUTCLIFFE LLP  
KAREN G. JOHNSON-MCKEYAN (SBN 121570)  
2 kjohnson-mckewan@orrick.com  
ANNETTE L. HURST (SBN 148738)  
3 ahurst@orrick.com  
GABRIEL M. RAMSEY (SBN 209218)  
4 gramsey@orrick.com  
405 Howard Street, San Francisco, CA 94105  
5 Tel: 1.415.773.5700 / Fax: 1.415.773.5759  
PETER A. BICKS (*pro hac vice*)  
6 pbicks@orrick.com  
LISA T. SIMPSON (*pro hac vice*)  
7 lsimpson@orrick.com  
51 West 52<sup>nd</sup> Street, New York, NY 10019  
8 Tel: 1.212.506.5000 / Fax: 1.212.506.5151

9 BOIES, SCHILLER & FLEXNER LLP  
DAVID BOIES (*pro hac vice*)  
10 dboies@bsfllp.com  
333 Main Street, Armonk, NY 10504  
11 Tel: 1.914.749.8200 / Fax: 1.914.749.8300  
STEVEN C. HOLTZMAN (SBN 144177)  
12 sholtzman@bsfllp.com  
1999 Harrison St., Ste. 900, Oakland, CA 94612  
13 Tel: 1.510.874.1000 / Fax: 1.510.874.1460

14 ORACLE CORPORATION  
DORIAN DALEY (SBN 129049)  
dorian.daley@oracle.com  
15 DEBORAH K. MILLER (SBN 95527)  
deborah.miller@oracle.com  
16 MATTHEW M. SARBORARIA (SBN 211600)  
matthew.sarboraria@oracle.com  
17 RUCHIKA AGRAWAL (SBN 246058)  
ruchika.agrawal@oracle.com  
18 500 Oracle Parkway,  
Redwood City, CA 94065  
19 Tel: 650.506.5200 / Fax: 650.506.7117

20 *Attorneys for Plaintiff*  
ORACLE AMERICA, INC.

21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA  
23 SAN FRANCISCO DIVISION

24 ORACLE AMERICA, INC.  
25 Plaintiff,  
26 v.  
27 GOOGLE INC.  
28 Defendant.

Case No. CV 10-03561 WHA

**DECL. OF NATHAN SHAFFER IN SUPPORT  
OF ORACLE'S RULE 59 MOTION FOR A  
NEW TRIAL**

Dept.: Courtroom 8, 19th Floor  
Judge: Honorable William Alsup

1 I, Nathan Shaffer, declare and state as follows:

2 1. I am a member of the bar of the State of California, admitted to practice before this  
3 Court, and an associate with the law firm of Orrick, Herrington & Sutcliffe LLP (“Orrick”),  
4 attorneys of record for plaintiff Oracle America, Inc. (“Oracle”). I am familiar with the events,  
5 pleadings and discovery in this action and, if called upon as a witness, I could and would testify  
6 competently to the matters stated herein of my own personal knowledge. I submit this declaration  
7 in support of Oracle’s Rule 59 Motion For A New Trial.

8 2. On June 17, 2016, I received an automated news alert that contained a link to an  
9 Engadget article titled “Android apps are now available on Chrome OS,” dated the same day.  
10 The Engadget article I reviewed is attached to the Bush Declaration filed in support of Oracle’s  
11 Rule 59 Motion For A New Trial as Exhibit D. The article also linked to a Google I/O 2016  
12 presentation that took place on May 19, 2016 announcing the availability of the Google Android  
13 Play Store on the Chrome Operating System (“Chrome OS”), which is attached to the Bush  
14 Declaration as Exhibit F. Exhibit F provided further details about Google’s new product, which I  
15 understand to be a full implementation of Android Marshmallow, including its APIs, running  
16 within Chrome OS, an operating system designed to power laptop and desktop personal  
17 computers.

18 3. Through further research, I found several additional articles related to Google’s  
19 new Android Marshmallow/Chrome OS product and a Google presentation from Google I/O  
20 2016 that provided further technical details related to Marshmallow/Chrome OS. *See* Bush Decl.  
21 Exs. A-F, H-J, V. I also found Exhibit I, an Ars Technica article dated April 24, 2016, which  
22 states that Google had planned to release the Google Play Store on Chrome OS at least as early as  
23 April 24, 2016, when it released code related to Chrome OS without any announcement.

24 4. Before, during, and after trial in this matter, I regularly reviewed public articles  
25 and information related to Google’s Android and related products. I had also watched the Google  
26 I/O 2016 Keynote, Exhibit EE, but I had not seen any information related to  
27 Marshmallow/Chrome OS prior to June 17, 2016. I shared the information I found with the  
28 attorneys at Orrick and the attorneys at Oracle, and I believe I was the first member of Oracle’s

1 legal team to learn about Google's Marshmallow/Chrome OS product.

2 5. I personally reviewed Google's discovery responses in this litigation as well as the  
3 deposition transcripts of Google employees taken in this matter, and I was unable to find any  
4 information related to Google's Marshmallow/Chrome OS product.

5 I declare under penalty of perjury under the laws of the United States the foregoing is true  
6 and correct.

7 Executed this 6th day of July, 2016, at San Francisco, CA.

8   
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28